

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-86610.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Under 30 U.S.C. § 226(b) (1982), land within a known geologic structure of a producing oil or gas field may only be leased by competitive bidding. If land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Bureau of Land Management that land is within a known geologic structure of a producing oil or gas field must show by a preponderance of the evidence that the determination is in error.

3. Estoppel

Estoppel will not lie against the United States where there is no evidence of affirmative misrepresentation or concealment of material fact by the Government.

APPEARANCES: Charles J. Frank, pro se; Lowell Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Charles J. Frank appeals a decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer W-86610. Appellant was the first-drawn applicant for parcel WY 138, listed on the July 1983

Notice of Land Available for Oil and Gas Filings. This parcel, encompassed the W 1/2 SW 1/4, SE 1/4 SW 1/4 sec. 34, T. 45 N., R. 66 W., Sixth Meridian, in Weston County, Wyoming.

On September 27, 1983, BLM sent an offer to lease and lease agreement to appellant for signature and requested the first year's rental of \$ 120. On October 13, 1983, BLM received appellant's rental, executed offer, and stipulation forms. On August 13, 1984, BLM issued its decision rejecting appellant's executed offer, pursuant to 43 CFR 3112.5-2(b), stating that the land had been found to be entirely within an undefined addition to the Lodgepole Creek known geologic structure (KGS), effective June 25, 1984.

In his statement of reasons on appeal, appellant emphasizes that BLM delayed months, until after the KGS designation, before denying him the lease. In addition, appellant points to the BLM case record, which contains notices informing the second- and third-drawn applicants that the lease had already issued to the first qualified applicant. Appellant argues that, because of the delay and statements made to others, BLM should be estopped from denying this lease. Appellant also argues that this KGS designation was technically unfounded, and submits a report by a consulting geologist to support this claim.

The report prepared by appellant's consultant states:

This parcel is located in the eastern Powder River Basin, an area of long-established production in the Lower Cretaceous Newcastle (or Muddy) and Dakota sandstones. It lies between the Clareton and Fiddler Creek trends, two of the grand old oil-producing "fairways" in the Newcastle and Muddy.

Closest production to the parcel is about 1/3 mile N at the small George Ranch field. In the SW 1/4 SW 1/4 of sec. 27, Stuarco Oil's #1 George Ranch well came in at 278 80/D in 1961 to be the discovery well for this field. 1/4 mile NW, Petroleum Inc. offset this well in 1961 with a 240 80/D producer from the Dakota in the NW 1/4 SW 1/4 of sec. 27. In the N 1/2 of sec. 27 (not shown on the detail map) two wells produce oil from the shallower Muddy sand. George Ranch field is still actively producing, and through the end of 1981 had yielded 136,343 barrels of oil and 2.79 million cubic feet of gas.

Unfortunately, drilling closer to the subject lease has not met with such good results; however, neither have they been totally negative. George Ranch field is separated from the subject parcel by an abandoned hole in the NW 1/4 NW 1/4 of sec. 34. This test, the Stuarco #2 George Ranch, did recover 130 feet of free oil on a drillstem test of the Dakota sand, from 6550-59'. This is a really decent oil show to be a "dry hole"; at today's prices, I suspect that there would have been a more serious attempt to stimulate and complete this hole as a producer.

There is one dry hole on the subject lease, the Risco #1 Schulte in the SE 1/4 SW 1/4 of sec. 34. Although a core in the

Dakota was barren, the Muddy gave a fair oil show in a drillstem test from 6244-304 feet; 90' of oil and gas-cut drill mud and 190' of slightly oil and gas cut mud were recovered.

Therefore, while no wells have been developed on the parcel, it would appear to have possibilities in both the Dakota and the Muddy. Both formations - especially the Muddy - are channel sandstones, with favorable reservoir lithology developed in ancient, branching, meandering stream channels. The encouraging drillstem tests results - in the Muddy on the lease and 1/2 mile north in the Dakota - suggested some unexplored potential on the parcel. A likely site for a test well on the parcel would be the center of the NW 1/4 SW 1/4 sec. 34, in order to intercept a possible favorable trend in the Dakota as seen further north.

In its answer BLM contends the geologic report appellant submitted supports the KGS designation. In addition, BLM submitted a copy of the geologic report prepared as a part of the determination to make this KGS addition. BLM states that

[r]egardless of what the BLM may have represented to the other drawees, the fact remains that a lease had not been issued when the BLM determined that the land described by the lease offer was within a KGS. It had therefore, no alternative to the rejection of the lease offer.

(Answer at 2).

The BLM report states:

The new KGS boundary is based on an examination of electric logs, PI cards, Wyoming State Oil and Gas Commission records, information contained in BLM oil field, and township and range files, and published information concerning the geology of the general area. The limits of the producing zones are both controlled by a lateral facies change from porous and permeable sandstone to shale.

Both producing formations are of shallow-water origin, consisting of estuarine tidal-flat channel fills or nearshore marine barrier island deposits. The Muddy and Dakota Sandstones in the subject area each usually consist of a single sand body. The Muddy Sandstone does exhibit a tendency to split in section 31, T. 45 N., R. 66 W., but throughout the rest of the area it essentially consists of one sand unit. Within the subject area both "pay" zones tend to be rather thin, often being only 3 or 4 feet thick. In spite of the thinness of the producing zones, the sands seem to persist laterally over distances of at least a few miles. During the transition from a shallow-water to a deep-water environment an increasing amount of clays and silts were reworked with the sands that were present, leading to a decrease in porosity and permeability.

The State Oil and Gas Commission lists the wells in NW 1/4 SE 1/4 of Section 22, SW 1/4 NW 1/4 of Section 27, NW 1/4 SW 1/4 of Section 32, T. 45 N., R. 66 W., and SE 1/4 NW 1/4 of Section 4, T. 44 N., R. 66 W. as being producing wells. The PI card for the well in Section 29, T. 45 N., R. 66 W. indicates that a 10-foot zone was perforated and "sandfracted," it was subsequently listed as "temp suspended." The well was originally "spud" in late 1954, no other information on the well was available. The DST performed on the well in SE 1/4 SE 1/4 of Section 8, T. 44 N., R. 66 W. missed what appears to be the most likely hydrocarbon producing zone. The same thing appears to have happened for the well in NW 1/4 SE 1/4 of Section 32, T. 45 N., R. 66 W. Three DST's were completed, but none of them assessed the Muddy or Dakota sands. The electric log suggests that the Dakota sand may contain hydrocarbons. No log or other data is available for the well in SE 1/4 NE 1/4 of Section 22, T. 45 N., R. 66 W. which was completed in April, 1984. Two additional well locations are also planned for Section 22.

The undefined addition to the Lodgepole Creek KGS includes all 40-acre parcels which are cut by, or included within the 3-foot isopach of either the Muddy or Dakota Sandstone producing zones. The 3-foot isopachs include all past or present producing wells from both of the producing formations in the area, as well as good "shows" which are present throughout the area. The 3-foot isopachs define the limits of the hydrocarbon reservoirs for both the Muddy and Dakota Sandstones. Lands in Sections 11 and 14 were not included since they cannot be linked to any Muddy "producers."

This report was made available to appellant and appellant was given the opportunity to respond.

[1] The Mineral Leasing Act of 1920, as amended, specifically provides that public lands within a known geological structure of a producing oil or gas field may be leased only to the highest responsible qualified bidder after competitive bidding. 30 U.S.C. § 226(b) (1982). 43 CFR 3120.1(a). If lands included in a noncompetitive lease offer are designated as within a KGS at any time before lease issuance, the noncompetitive lease offer must be rejected as to those lands. 43 CFR 3110.3(a); 43 CFR 3112.5-2(b); McDonald v. Clark, 771 F.2d 460 (10th Cir. 1985); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Harry S. Hills, 71 IBLA 302 (1983); Richard J. DiMarco, 53 IBLA 130 (1981), aff'd, DiMarco v. Watt, Civ. No. 81-2243 (D.D.C. Mar. 25, 1982). Such rejection is not an attempt to thwart the noncompetitive lease applicant. It is the only course of action BLM may take, once a proper KGS designation is made.

[2] In 43 CFR 3100.0-5(1), "known geologic structure" is defined to mean:

technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive.

It is important to keep in mind that if BLM includes land in a KGS it does not necessarily mean the land is currently producing or conclusively productive. When BLM includes land in a KGS it does not predict future productivity. Land may properly be included in a KGS based upon geologic evidence indicating that a producing deposit extends under the land which renders the land "presumptively productive."

An oil and gas lease applicant challenging a KGS determination has the burden of showing by a preponderance of the evidence that the determination is in error. Bender v. Clark, 744 F.2d 1424 (10th Cir. 1984). In this case, the BLM geological data and supporting information substantiate the KGS determination. BLM has submitted evidence to show that productive formations extend under this tract, and that a well on this tract would be likely to show positive results in at least one of the two target formations. Appellant's submissions do not refute the BLM determination.

After examining the evidence the parties submitted, we conclude a preponderance of the evidence supports the BLM determination that the land is at least "presumptively productive" of oil or gas within the meaning of 43 CFR 3100.0-5(1).

[3] Appellant essentially claims the Government is estopped from denying this lease even if the parcel is in a KGS. However, BLM does not obligate itself to issue a lease by soliciting applications in the simultaneous system or by sending lease forms to an offeror for signature. See Norma Richardson, 86 IBLA 168 (1985); Satellite 8305141, 85 IBLA 307 (1985). As this Board has stated "a drawing does not vest in a lease applicant a right, contractual or otherwise, to an oil and gas lease, but merely establishes the priority of filing." Evelyn D. Ruckstuhl, 85 IBLA 69 at 72-3 (1985); McDade v. Morton, *supra* at 1010. See also Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969).

The file contains two undated standard form notices, addressed to the second- and third-drawees, which state that because the lease was issued to the first-qualified applicant, their applications are rejected. There is no indication these were mailed, however, as unused mailing envelopes and return receipt cards were still clipped to the notices. As it is BLM standard procedure to retain the applications submitted by the second- and third-drawees until adjudication of the first-drawn application is complete, it appears the notices had been prepared but not mailed. One can speculate that the notices were retained in case they would be needed. However, they were no longer accurate. As this Board said in Frederick W. Lowey, 76 IBLA 195 (1983), absent a showing of affirmative misrepresentation or concealment of material fact by the Government, there can be no estoppel against the United States. See also United States v. Ruby Co., 588 F.2d 697, 703-4 (9th Cir. 1978). There is no indication in the record on appeal of any concealment of the process BLM used or any irregularity in the KGS determination.

Furthermore, the authority of the United States to protest a public interest such as that created by the Mineral Leasing Act is not lost by official delays in the performance of that duty. 43 CFR 1810.3. Bob F. Abernathy, 71 IBLA 149, 151 (1983).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge

